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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 1163-0562PUS1	
		Application Number 10/575,379-Conf. #9075	Filed April 11, 2006
		First Named Inventor Toshiyuki ANDO et al.	
		Art Unit 3662	Examiner I. A. Alsomiri
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 45%;"> <p><input type="checkbox"/> applicant /inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>29,680</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____</p> </div> <div style="width: 50%; text-align: right;"> <p><u>Perry Caudle #46,607</u> Signature</p> <p><u>Michael K. Mutter</u> Typed or printed name</p> <p><u>(703) 205-8000</u> Telephone number</p> <p><u>June 24, 2009</u> Date</p> </div> </div> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below".</p>			
<input type="checkbox"/> *Total of <u>1</u> forms are submitted.			

ARGUMENTS IN SUPPORT OF PRE-APPEAL BRIEF REVIEW

On page 2 of the final Office action ("Action"), the Examiner rejects claims 1 and 3-6 under 35 U.S.C. § 103(a) as being unpatentable over Japanese Patent Publication No. 2003-240852 to Shunpei ("Shunpei") in view of Japanese Patent Publication No. JP 04-133533 to Makoto et al. ("Makoto"). Applicants respectfully traverse this rejection.

In order to support a rejection under 35 U.S.C. §103, the Examiner must establish a *prima facie* case of obviousness. To establish a *prima facie* case of obviousness three criteria must be met. First, there must be some rationale to combine the cited references. Second, there must be a reasonable expectation of success. Finally, the combination must teach each and every claimed element. In the present case, claims 1 and 3-6 are patentable over the combination of Shunpei and Makoto for at least the reason that the combination fails to teach each and every claimed element. More specifically, the combination fails to teach or suggest a frequency deviation detecting means that detects the frequency deviation of the light signal due to propagation by the optical guide as claimed.

In rejecting claim 1, the Examiner acknowledges that Shunpei fails to disclose a frequency deviation detecting means that detects the frequency deviation of the light signal due to propagation by the optical guide. Therefore, the Examiner relies on the teachings of Makoto to overcome the deficiencies of Shunpei. More specifically, the Examiner asserts that Makoto discloses "an output stabilized light source, in which the final light intensity at the end of the transmitting means (optical fiber) is monitored and returned to a reference voltage generation circuit, which compensates the influence of the intensity variation due to transmitting means." Therefore, the Examiner concludes that "[i]t would have been obvious to further include measure [sic] the frequency deviation caused by the propagation system to compensate for the influence of the intensity variation due to the propagation on the optical guide means." The Examiner's assertions are unfounded for the following reasons.

First, nowhere in Makoto is there any disclosure or suggestion of detecting a *frequency* deviation due to propagation by the optical guide means as claimed. To the contrary, Makoto merely discloses monitoring intensity variation in the optical output.

Monitoring *intensity* variation is *not* equivalent to detecting a *frequency* variation as claimed. Since Shunpei and Makoto both fail to disclose or suggest a light wave radar apparatus that includes a frequency deviation detecting means that detects the frequency deviation of the light signal due to propagation by the optical guide as claimed, the combination of these two references cannot possibly disclose or suggest said element. Therefore, even if one skilled in the art did have some rationale to combine Shunpei and Makoto, (which Applicants do not concede) the combination would still fail to render claim 1 unpatentable because the combination fails to disclose each and every claimed element.

Dependent claim 4 further recites that the frequency deviation detecting means combines a part of the light signal emitted out of the light emitting means and part of the light signal propagated by the optical guide means to generate a combined light, and detects the frequency deviation from the combined light. In rejecting claim 4, the Examiner points to Fig. 1 of Makoto as disclosing the claimed combined light.

However, Fig. 1 of Makoto clearly only illustrates a single light means diverted from the optical transmission line 8. Therefore, either Makoto fails to disclose combining the part of the light signal emitted out of the light emitting means or Makoto fails to disclose combining the part of light propagated by the optical guide means as clearly Makoto only illustrates a signal light part. Accordingly, claim 4 is patentable over the combination of Shunpei and Makoto not only for those reasons presented above with respect to claim 1, but also because the combination fails to disclose detecting the frequency deviation in the *combined* light as claimed.

Dependent claim 5 further recites that the frequency deviation detecting means combines part of the light signal emitted out of the light emitting means, and a light signal reflected by an internal reflection point between the optical guide means and the light transmit-receive means to generate a combine light, and detects the frequency deviation of the light signal from the combined light. The combination of Shunpei and Makoto fails to disclose detecting a frequency deviation in a combined light (see discussion above with respect to claim 4). Therefore, claim 5 is patentable over the combination of Shunpei and Makoto not only for those reasons presented above with

respect to claim 1, but also because the combination fails to disclose detecting the frequency deviation in the *combined* light as claimed.

Dependent claim 6 further recites that the frequency deviation detecting means detects the frequency deviation of the light signal from a temporal change in the intensity of the light signal. In rejecting claim 6, the Examiner asserts that Makoto teaches detecting a frequency deviation of the light signal from a temporal change in the intensity of the light signal. However, the Examiner provides no support for such an assertion.

Although Makoto discloses monitoring the intensity of the light signal in the form of converting the light signal into an electrical signal so that the converted electrical signal can coincide with a reference voltage. Nowhere in Makoto is there any disclosure or suggestion of determining a temporal change in the intensity of the light signal and using the determination to detect a frequency deviation as claimed.

For at least those reasons presented above, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1 and 3-6 under 35 U.S.C. § 103.

On page 4 of the Action, the Examiner rejects claims 2 and 7 under 35 U.S.C. § 103(a) as being unpatentable over Shunpei in view of Makoto, further in view of Japanese Patent Publication No. 63-266382 to Osamu (Osamu '82) or Japanese Patent Publication No. 63-71675 to Osamu (Osamu '75). Applicants respectfully traverse this rejection.

As discussed above with respect to claim 1, from which claims 2 and 7 depend, the combination of Shunpei and Makoto fails to disclose or suggest a frequency deviation detecting means that detects the frequency deviation of the light signal due to propagation by the optical guide as claimed. Therefore, claim 2 is patentable over the combination of Shunpei and Makoto for at least those reasons presented above with respect to claim 1.

Osamu '82 and Osamu '75 disclose a laser distance measuring instrument. However, neither of these two references overcome the deficiencies of Shunpei and Makoto. Since Shunpei, Makoto, Osamu '82, and Osamu '75 each fail to disclose or suggest a light wave radar apparatus that includes a frequency deviation detecting means that detects the frequency deviation of the light signal due to propagation by the optical guide as claimed, any combination of these four references cannot possibly disclose or

suggest said element. Therefore, even if one skilled in the art were motivated to combine Shunpei, Makoto, Osamu '82, and/or Osamu '75, the combination would still fail to render claims 2 and 7 unpatentable because the combination fails to disclose each and every claimed element. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 2 and 7 under 35 U.S.C. § 103.